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Supreme Court, U.S.
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No. 96-812

In The

# Supreme Court of the United States

October Term, 1996

JUDY HINES,

*Petitioner,*

vs.

FRANKLIN HOMES, INC., et al.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama**

## BRIEF IN OPPOSITION

JEFFREY L. BOWLING
BEDFORD, ROGERS & BOWLING, P.C.
P.O. Box 669
Russellville, Alabama 35653
(205) 332-2880
*Counsel for Respondent, Franklin Homes, Inc.*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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## QUESTION PRESENTED

Whether the trial court erred in granting a directed verdict for respondents, Franklin Homes, Inc., and Cecil Eugene Nix?

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## RESPONDENTS' BRIEF IN OPPOSITION

Respondents request that the Court deny the petition for writ of certiorari seeking review of an opinion of the Supreme Court of Alabama. The Alabama Supreme Court affirmed the trial court's decision on 4/19/96, without opinion. On 6/21/96, Petitioner's Application for Rehearing was denied without opinion. (For the convenience of the Court, all citations to the opinions will be to the opinions attached as Appendices 1 and 2 to the petition).

## STATEMENT OF JURISDICTION

This Court cannot properly exercise jurisdiction over this case pursuant to 28 U.S.C. Sec. 1257(a). The question presented for review in the petition was never presented to the Alabama courts, including the highest court in the state of Alabama. This newly presented argument may not properly be considered.

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS WHICH THE CASE INVOLVE

Petitioner alleges that 42 U.S.C. 2000(e), et seq. is involved in this matter. Respondents represent that this is a misstatement of fact in that said statute was only alleged in the Petitioner's initial complaint and no evidence was given to substantiate a ruling by the court in favor of the Petitioner which would be founded upon said statute. Further, at no time during the appellate

process did the Supreme Court of Alabama address any issue concerning a violation of 42 U.S.C. 2000(e).

## STATEMENT OF THE CASE

Respondents respectfully oppose the petition for writ of certiorari. In Petitioner's Statement, she addresses the issues alleged in her initial complaint. The only issue ever presented on appeal prior to the filing of the Petition for Writ of Certiorari to this Court was whether or not the trial court erred in granting a directed verdict in favor of respondents, Franklin Homes, Inc., and Cecil Eugene Nix.

### A. Course of Proceedings and Disposition of the Case Below.

This case was brought by the Petitioner, Judy Hines, against the Respondents, Franklin Homes, Inc. and Gene Nix. The Complaint in this cause was initially filed in the Circuit Court of Colbert County, Alabama, on or about 1/13/94. In the Complaint, Petitioner, Judy Hines, alleges that while an employee of Franklin Homes, Inc., she was sexually harassed by a co-employee, Gene Nix. Further, Petitioner, Judy Hines, alleges that during her employment at Franklin Homes, Inc., respondent, Gene Nix, committed an assault and battery on her person as well as committing acts which were an invasion of her privacy rights. Initially, respondents, Franklin Homes, Inc. and Gene Nix, filed a Motion to Transfer Venue, requesting that this matter be transferred to the Circuit Court of Franklin County, Alabama. After a hearing on the

Respondent's Motion to Transfer Venue, on 4/13/94, this matter was transferred from the Circuit Court of Colbert County, Alabama, to the Circuit Court of Franklin County, Alabama by the Honorable Judge Inge Johnson, presiding Circuit Judge, Circuit Court of Colbert County, Alabama. At the time this matter was transferred to Franklin County, Respondents, Gene Nix and Franklin Homes, Inc., were represented by the same counsel, being the law firm of Bedford & Rogers, P.C. Subsequent to the transfer of venue, on 4/25/95, counsel for Gene Nix withdrew and substitute counsel, Hon. William M. Bouldin, was then obtained by Gene Nix.

In answer to the Petitioner's Complaint, the Respondent, Franklin Homes, Inc., stated that it denied all allegations contained in the Petitioner's Complaint. In addition, Respondent, Franklin Homes, Inc., raised the affirmative defense of the statute of limitations. Further, Respondent, Franklin Homes, Inc., pled that any Count contained in the Petitioner's Complaint for assault and battery or any cause of action lying in tort would be covered by the workman's compensation law of the State of Alabama and should be covered under said Law rather than being a portion of the Petitioner's claim for sexual harassment. Respondent, Gene Nix, responded in his answer by denying all allegations contained in the Petitioner's Complaint. Respondent, Gene Nix, as did Franklin Homes, Inc., raised the affirmative defense of the statute of limitations. Prior to the trial of this matter, both Respondents, Franklin Homes, Inc. and Gene Nix, filed Motions for Summary Judgment. Respondent, Franklin Homes, Inc., having filed its Motion for Summary Judgment on, to-wit, 4/25/95; and Respondent, Gene Nix,

having filed his Motion for Summary Judgment on, to-wit, 4/26/95. On 5/3/95, Petitioner, Judy Hines, filed her response to Respondent's Motions for Summary Judgment wherein she relied only upon the deposition testimony of Judy Hines and Gene Nix. On 5/5/95, a hearing was held on Respondent's Motions for Summary Judgment. The Honorable John D. Jolly, Circuit Judge of Franklin County, Alabama, withheld ruling on said Motions and instructed counsel that said Motions could be reinstated at the trial of this cause and at that time would be treated as Motions for Directed Verdict.

Thereafter on 5/15/95, the trial of this matter began and after the presentation by the Petitioner of all her evidence, a directed verdict was granted in favor of both Respondent, Franklin Homes, Inc. and Respondent, Gene Nix. On or about, 6/12/95, Petitioner, Judy Hines, filed her Motion for New Trial. Said Motion was set for hearing on 6/30/95. Motion for New Trial was overruled on 7/12/95, after counsel for the Petitioner had waived a hearing on same. Thereafter, on or about 8/18/95, Notice of Appeal to the Alabama Supreme Court was given. The Alabama Supreme Court affirmed the trial court's decision on 4/19/96, without opinion. On 6/21/96, Petitioner's Application for Rehearing was denied without opinion. (Appendices 1 and 2 to the petition).

## SUMMARY OF ARGUMENT

The state courts, as set forth in the Statement of the Case, did not err in granting a directed verdict for Respondents, Franklin Homes, Inc., and Cecil Eugene

Nix. In granting a directed verdict, the Petitioner's constitutional rights were not violated. The fact that Petitioner's case allegedly alleged sexual harassment pursuant to 42 U.S.C. 2000(e) does not change or alter the fact that no constitutional rights were violated. Petitioner has never, prior to the filing of the Petition for Writ of Certiorari to this Honorable Court, raised the issue of any violation of a title, right, privilege or immunity under the Constitution or Statute of the United States. The only illusion to said title, right, privilege or immunity was the allegation of a violation of 42 U.S.C. 2000(e) in the Petitioner's initial complaint in this matter. At no time has any court made any ruling regarding a violation of said Code section. The trial court granted a directed verdict at the close of the Petitioner's case without addressing whether or not said Code section had been violated. The trial court stated only that it felt the Petitioner had not presented substantial evidence sufficient to submit the case to the jury. On appeal, the Supreme Court of the State of Alabama reviewed only whether or not the trial court's decision in granting summary judgment was proper, therefore the Petitioner has not met the requirements found in United States Code, Title 28, Section 1257 (28 U.S.C. 1257) in order that the jurisdiction of the Supreme Court of the United States be invoked thereby allowing said Honorable Court the right to review the instant case.

## ARGUMENT

### A. THIS COURT HAS NO JURISDICTION TO CONSIDER MOST OF PETITIONER'S ARGUMENTS

Pursuant to 28 U.S.C. Sec. 1257, this Court refuses to review judgments rendered by the highest court of a state unless a federal question has been both raised and decided in the state court below. *Yee v. City of Escondido,* 503 U.S. 519 (1992). Further, this court has consistently held that if the federal question is not real rather than being fictitious that the jurisdiction of the Supreme Court of the United States over judgments of state courts will not be invoked. See *Caldwell v. Texas,* 137 U.S. 692, 34 L. Ed. 816, 11 S. Ct. 224 (1891). Additionally, this court held where there was no foundation whatever for the theory upon which the jurisdiction of the Supreme Court was invoked the case would be dismissed. *Ennis Waterworks v. Ennis,* 233 U.S. 652, 58 L. Ed. 1139, 34 S. Ct. 767 (1914).

The theory which has been cited in numerous Supreme Court decisions that "it is not enough to give Supreme Court jurisdiction over judgment of state court for the record to show that a federal question was argued or presented to the state court for decision; it must appear that the decision of the federal question was necessary to the determination of the cause; and that it was actually decided, or that the judgment could not have been given without deciding it." (Voluminous citations omitted.) In expounding on this theory, in the case of *Wilson v. Cook* 327 U.S. 474, 90 L. Ed. 793, 66 S. Ct. 663 (1946), this Court stated that before this Court may review the decision of the state court it must appear

affirmatively from the record not only that the federal question was presented to the highest court of the state having jurisdiction but that its decision of the federal question was necessary for the determination of the cause.

In this Court, for the first time, petitioner argues that she was denied her constitutional rights when the state courts directed a verdict in favor of the employer and an employee at the close of petitioner's case alleging sexual harassment pursuant to 42 U.S.C. 2000(e). (Petition at i) At no time in petitioner's writ does she mention a violation of said Code section other than making illusions to the allegations contained in her initial Complaint. Further, in petitioner's "Reasons for Granting the Writ" there is no evidentiary argument setting forth a violation of 42 U.S.C. 2000(e). Petitioner merely repeats her arguments made in the Supreme Court of Alabama, both in her initial appeal and in her Petition for Rehearing, wherein the Issue Presented For Review was "Did the trial court err in directing a verdict for the Appellees?" As this Court can clearly see, no request to review a federal question, statute, right, privilege, title or immunity was made by petitioner. Further, petitioner only requested that the Supreme Court of Alabama decide whether or not the trial court made a proper ruling concerning the procedural aspects of the granting of a directed verdict, a request squarely founded upon the procedure and case law interpreting said procedure in the State of Alabama. From the outset, i.e., from the trial court stage through the appellate process, i.e., the Supreme Court of Alabama, no court has deemed the Petitioner's claim of a violation of a federal statute meritorious requiring a ruling on said

claim. Stated differently, the trial court in granting directed verdict ruled that the Petitioner had failed to submit substantial evidence to present the matter to a jury for its determination of its merits. On Appeal, the Supreme Court of Alabama, both in its initial ruling and in its ruling on Application for Rehearing, affirmed the trial court's granting of a directed verdict without rendering an opinion. The Supreme Court of Alabama cited as reason for its "no opinion" opinion Alabama Rules of Appellate Procedure Rule 53(a)(1) and 53(a)(2)(f), which states, "The Supreme Court or the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if the court determines that (1) that an opinion in the case would serve no significant presidential purpose; and (2) That one of the following circumstances exists: (f) The court, after a review of the record and contentions of the parties, concludes that the judgment or order was entered without an error of law". Therefore, the Supreme Court of Alabama addressed only whether or not the directed verdict by the trial court was proper and in doing so found no merit in the arguments presented by petitioner on appeal nor did it find any error in the trial court's decision. Lastly, it is clear that the Supreme Court of Alabama was never called upon to address the issue of a federal question, statute, right, privilege, title or immunity, the court only addressed whether or not the state procedure of the directing of a verdict at the close of the petitioner's evidence was proper and found that said directed verdict was proper.

## CONCLUSION

At no time prior to the filing of petitioner's writ for certiorari has petitioner raised the issue of any violation of a title, right, privilege or immunity under the Constitution or Statute of the United States. The writ of certiorari should be denied.

Respectfully submitted,

JEFFREY L. BOWLING
*Counsel of Record for Respondents*
BEDFORD, ROGERS & BOWLING, P.C.
P.O. Box 669
Russellville, Alabama 35653
(205) 332-2880